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PATENT

ATTY DOCKET NO. 0233-0001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Thomas Harmer et al.

Title: Racing Sulky

Serial No: 10/633,262

Filing Date: 07/31/2003

Group: 3618

Examiner: To be assigned

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Signed:

Roger J. French

Dated: September 27, 2004

703-872-9306

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION TO MAKE SPECIAL

Sir,

This is a Petition to Make Special for the patent application for a "Racing Sulky" identified above.

Applicant requests this patent application be granted special status because there is an infringing product actually on the market.

Included with this petition is the fee, as set forth in 37 CFR 1.17(h). If there are any charges in connection with the prosecution of this application that are not otherwise paid, please charge the deposit account #502195 for Beem Patent Law Firm.

If the Office believes that a restriction requirement is necessary, Applicant provisionally elects the invention of claims 5-8 for prosecution, as required by MPEP 708.02 VIII(B).

A rigid comparison of the infringing product has been made with the claims of the application, and, in the opinion of the undersigned attorney, some of the provisionally elected claims of the application filed herewith are unquestionably infringed by the infringing product.

A careful and thorough pre-examination search of the prior art has been conducted. The search was conducted in the following classes and subclasses:

280 Land Vehicles29 Wheeled, subclass under class 280

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63 Two-Wheeled, subclass under subclass 29

64 Adjusting Wheels, subclass under subclass 63

65 Spring, subclass under subclass 63

The most closely related (to the provisionally elected claims) prior art references are U.S. Patents 6,095,536 and 6,354,613, both to Stein et al. (collectively "Stein") and PCT Application WO 93/19969 to Walsh. Copies of the references are included with this petition.

Stein discloses a sulky described as having "generally longitudinally extending spaced apart rails 12, which are symmetrical about center line CL" (U.S. Patent 6,095,536 col. 3, l. 22-24) wherein each rail has "a first end and a second end, a first segment extending forwardly and inwardly from the second end, a second segment extending forwardly and outwardly from the first segment creating a first bend therebetween, and a third segment extending axially inwardly from the second segment and creating a second bend therebetween... [and] a fourth segment extending forwardly, outwardly, and downwardly from the third segment and creating a third bend therebetween" (U.S. Patent 6,095,536, claim 1).

Walsh discloses a sulky described as having "a pair of shafts 12 extending forwardly one on either side of the sulky.... At a forward end of the shaft is a portion thereof generally known as a point, which is designated as 14. The opposite end of the shafts 12 are connected to a generally U-shaped tubular structure 16 commonly termed a 'back bend' or 'back bow'" (WO 93/19969, p. 4, l. 9-14). The shafts 12 curve inwardly near forward end 14 to hitch to the horse (WO 93/19969 FIG. 2). Also, "the wheels of the sulky are offset from the center line between the shafts" (WO 93/1996, p. 5, l. 25-26, see also FIG. 2).

The provisionally elected claims of the application filed herewith are patentable over Walsh and Stein because, *inter alia*, neither Walsh nor Stein, alone or in any proper combination, teach or suggest a sulky including a pair of laterally spaced wheels having a longitudinal center line therebetween mounted generally at opposite ends of a generally tubular arch, a seat mounted to the arch having distal ends, and a first rail and a second rail extending from the arch, wherein a portion of the first rail proximate the arch is

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angled toward the wheel center line as said portion extends from the arch so that the wheel center line is offset from a center line between the distal ends.

Rather, Stein discloses a sulky and rails 12 "which are symmetrical about the center line CL" (U.S. Patent 6,095,536, col. 3, l. 21-25), wherein the sulky's wheels are equidistant from center line CL (see U.S. Patent 6,095,536). Stein does not teach or suggest an offset as claimed in Applicants' claim 5.


Walsh discloses a sulky wherein the shafts 12 extend generally forwardly from a back bow 16 and then curve inwardly near forward end 14 of shafts 12 to hitch to a horse (see WO 93/19969 FIG. 2). Therefore, neither of Walsh's shafts have a portion proximate an arch that angles inwardly, as required by claim 5.

Claims 6-8 depend from claim 5, and are therefore patentable for at least the same reasons as claim 5.

Therefore, neither Stein nor Walsh teach or suggest Applicants' invention as claimed in claims 5-8, accordingly, it is respectfully requested that the claims be allowed.

Respectfully submitted,

Dated this 27th day of September, 2004.


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